

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. Cr. S-02-306 DFL DAD

Plaintiff,

Memorandum of Opinion  
and Order

v.

DANIEL RAY LAJOCIES,

Defendant,

and

JOSE ROBERTO VELLEZA, and DENNIS  
R. and JANET M. HORTON,

Sureties.

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Sureties Jose Roberto Velleza and Dennis and Janet Horton move to set aside bail forfeiture. In 2002, to secure the release of defendant Daniel Ray LaJocies, Velleza posted an unsecured \$25,000 Vaccaro bond, and the Hortons posted a \$25,000 Vaccaro bond secured by their real property. Velleza also agreed to be LaJocies's third-party custodian.

1 One of the terms of LaJocies's release was that he not use  
2 controlled substances. The sureties knew of this release  
3 condition and agreed in writing that "if defendant fails to obey  
4 and/or perform any of these conditions whatsoever, the bond can  
5 be forfeited." On March 11, 2003, Magistrate Judge Hollows  
6 found that LaJocies had violated the terms of his release by  
7 using methamphetamine. Accordingly, on September 21, 2006, this  
8 court ordered the bonds forfeited.

9 Violation of a release condition is grounds for bail bond  
10 forfeiture. United States v. Vaccaro, 51 F.3d 189, 191 (9th  
11 Cir. 1995) (citing Fed. R. Crim. P. 46(e)(1)). Nevertheless,  
12 under Fed. R. Crim. P. 46(f)(2) and (4), the court has  
13 discretion to set aside or remit any portion of a bond  
14 forfeiture if justice so requires. See United States v.  
15 Castaldo, 667 F.2d 20, 21 (9th Cir. 1981); United States v.  
16 Abernathy, 757 F.2d 1012, 1015 (9th Cir. 1985). "A trial court  
17 should consider several factors when deciding whether to remit  
18 or set aside a forfeiture, including 1) the willfulness of the  
19 defendant's breach of conditions; 2) the participation of the  
20 sureties in apprehending the defendant; 3) the cost,  
21 inconvenience and prejudice suffered by the government as a  
22 result of the defendant's breach; and 4) any explanation or  
23 mitigating factors presented by the defendant." Castaldo, 667  
24 F.2d at 21.

25 The sureties assert that the breach here was less than  
26 willful because LaJocies was addicted to methamphetamine. They  
27 also argue that the government was not prejudiced by LaJocies's  
28 drug use. Finally, the Hortons submit two letters attesting to  
their good intentions - one from the Rev. Richard D. McCoy,

1 their pastor, and the other from Dennis Horton himself. Both  
2 letters also assert that the Hortons are not members of the  
3 Hell's Angels motorcycle gang.

4 The government asserts that LaJocies's use of drugs was  
5 willful, that the government is unaware of any attempt by the  
6 sureties to prevent LaJocies from violating the terms of his  
7 release, and that the sureties have failed to identify any  
8 mitigating factors. Finally, the government argues that setting  
9 aside the forfeiture would send a message that defendants may  
10 violate release terms without consequence to their sureties.

11 In the circumstances presented here, the court finds  
12 partial remission to be appropriate. On the one hand,  
13 LaJocies's breach caused no prejudice to the government and  
14 little if any harm to the public. On the other hand, Velleza  
15 was a third-party custodian, and there is no evidence that he  
16 discharged his duties. His willingness to accept the  
17 appointment and post his bond was an indication to the court  
18 that he knew LaJocies, could vouch for him, and would supervise  
19 him. There is no indication that Velleza took any steps to  
20 notify the government of LaJocies's methamphetamine use. Nor is  
21 there any indication that he was ignorant of LaJocies's drug  
22 habit before agreeing to act as third-party custodian.  
23 Accordingly, the court ORDERS that \$10,000 BE REMITTED to  
24 Velleza.

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1 As for the Hortons, by putting up secured property they  
2 were assuring the court that they knew LaJocies and had  
3 confidence in him on release. As it turns out, they barely knew  
4 him. It was reckless of them to post their property, and  
5 misleading to the court. Accordingly, the court ORDERS that  
6 \$10,000 BE REMITTED to the Hortons.

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8 IT IS SO ORDERED.

9 Dated: March 21, 2007  
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12 /s/ David F. Levi  
13 DAVID F. LEVI  
14 United States District Judge  
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